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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1987

WOODFIN M. VOINCHE

APPELLANT

v.

UNITED STATES DEPARTMENT OF
JUSTICE, ET AL

APPELLEES

ON APPEAL FROM
THE U.S. FIFTH CIRCUIT
COURT OF APPEALS

JURISDICTIONAL STATEMENT

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EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

QUESTIONS PRESENTED

1) Whether Appellant has stated a claim against the Appellees and whether there is a conspiracy to keep Appellant under surveillance in violation of the constitution?

2) Whether the Department of Justice is trying to use semantical distortion to circumvent and usurp the provisions of the Freedom of Information Act and Privacy Act and legislate by Fiat their own FOIA and PA and involved in a coverap and whether summary judgement in favor of the DOJ was appropriate?

3) Whether obstraction of justice has occurred under Title 42 Sec. 1985?

4) Whether Appellant has the right to Trial By Jury under the 7th amendment of the Constitution?

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1987

LIST OF ALL PARTIES

WOODFIN M. VOINCHE

APPELLANT

v.

UNITED STATES DEPARTMENT OF JUSTICE, SOUTH CENTRAL BELL, AMERICAN TELEPHONE AND TELEGRAPH, DAVID ROCKEFELLER, EDWIN EDWARDS, RAYMOND J. LABORDE

APPELLEES

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NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1987

ROGERS M. VOINCHE

APPELLANT

v.

UNITED STATES DEPARTMENT OF
JUSTICE, ET AL

APPELLEES

ON APPEAL FROM
THE U.S. FIFTH CIRCUIT
COURT OF APPEALS

OPINION BELOW

The United States District Court for the Western District of Louisiana issued two Rulings and a Judgement which have been unreported to this date. The Ruling dated, September 16, 1987, is set out in Appendix A and the Ruling and Judgement filed on October 7, 1987 are presented at Appendix B.

The U. S. Fifth Circuit Court of Appeals entered a Judgement dated February 4, 1988, as is reported at Appendix C.

JURISDICTION

This is an appeal from a final JUDGEMENT by the U.S. Court of Appeals dated February 4, 1988 and brought forth under the Freedom of Information Act, the Privacy Act, the Constitution of the United States of America, and Title 42 USC Sections 1983 and 1985. The NOTICE OF APPEAL was filed with the Fifth Circuit Court of Appeals on February 23, 1988 and is presented in Appendix D. The jurisdiction of this court is invoked pursuant to Title 28 USC Sections 1251, 1252, 1257 and Articles III and VI of the Constitution. The cases believed to sustain jurisdiction include, but are not limited to: Kush v. Rutledge, 460 U.S. 719, 103 S.Ct. 1483(1983); United Broth. Of Carpenters & Joiners v. Scott, 463 U.S. 922, 103 S.Ct. 3352(1983); Lugar v. Edmondson Oil Co., Inc., 457 U.S. 922, 102 S.Ct. 2744 (1982).

CONSTITUTIONAL AND STATUTORY PROVISIONS

United States Constitution, Article III, Sec. 2, cl. 1 and 2.

United States Constitution, Article VI, cl. 2(the supremacy clause)

United States Constitution, Amendments I, IV, V, VII, XIII, and XIV

Civil Rights Statute
42 USC Sec. 1983
42 USC Sec. 1985

Freedom of Information Act
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552(a)(1)(A)
552(a)(6)(B)(iii)

Rules of Evidence
Rule 406

The text of each citation appears at Appendix E or where appropriate is cited in main text of this Jurisdictional Statement.

STATEMENT OF THE CASE

1) Proceedings Below, Federal Questions Raised

On June 9, 1987, Plaintiff Woodfin Voinche, filed a civil action in the U.S. District Court for the Western District of Louisiana against the Department of Justice, David Rockefeller, Governor Edwin Edwards, Raymond Laborde, American Telephone and Tele-

graph, and South Central Bell under the provisions of the Freedom of Information Act, the Privacy Act of 1974 and the civil rights guaranteed under the First, Fourth, Fifth, Seventh, Ninth, Thirteenth, and Fourteenth amendments to the Constitution of the United States of America. (NR-1 Civil Docket Sheet)

As stated in the original complaint under FACTS points 1-5, Appellant made a written request to the FBI "requesting all information the FBI and/or CIA" had "on file about my personal and/or political activities." Appellant received a negative response from Mr. Emil P. Moschella, but was not informed of right to appeal. By letter dated, April 14, 1987, Petitioner appealed initial FOIA request to the Department of Justice. (Exhibit A-5; All Exhibits attached to NR-35 of the Civil Docket Sheet were placed in an accordian folder)

All of the Defendant/Appellees except the Department of Justice filed answers and/

or motions to dismiss claiming "a lack of personal jurisdiction" or "a failure to state a claim." Petitioner filed a Memorandum Of Points And Authorities In Support Of Civil Action(NR-35 Civil Docket Sheet) citing 28 USC Sec. 1331, 1332, 1343 establishing jurisdiction for Federal-Constitutional issues; citing a specific incident where Appellant was kept under surveillance; that Appellant had spoken to a number of individuals questioned by Federal agents about Appellant; and citing a number of Exhibits and sources establishing a motive and method for keeping Appellant under surveillance.

Petitioner served Defendants Rockefeller, Edwards, and Laborde with interrogatories. Appellant filed a Motion To Compel Appellee Rockefeller to answer interrogatories(NR-40); a Motion To Sanction Edwards For Failure To Admit(NR-45-7); and a Motion To Compel for Laborde's incomplete answers.(NR-57-9)

On September 16, 1987, the District Court issued its first Ruling (NR-60) (Appendix A to this statement) granting all of the Defendant's Motion To Dismiss under Rule 12 of FRCP, except for the Department of Justice. (NR-60 of Civil Docket Sheet)

The Department of Justice, on September 11, 1987, entered a Motion For Summary Judgement with an accompanying affidavit by Mr. John F. Loome, (NR 50-3 CDS). The next regular motion day was set for October 19, 1987 (NR-54). By September 21, 1987, Plaintiff-Appellant filed his Memorandum In Opposition To Justice Department's Motion For Summary Judgement (NR-65).

A Notice Of Deposition was filed on October 2, 1987 (NR-70) and on October 7, 1987, the District Court issued a Final Ruling and Judgement granting the Department of Justice's Motion For Summary Judgement. (NR-68-69) (Appendix B to this Statement)

The Notice Of Appeal was filed.

Appellant appealed the District Court's Ruling to the U.S. Fifth Circuit Court of Appeals; and the Court of Appeals record was supplemented with the Depositions of 4 of the 8 people questioned under oath.

With the additional evidence presented through Depositions, Affidavits, and Exhibits Appellant filed a Brief(December 3, 1987) and a Reply Brief(February 1, 1988) showing a sophisticated conspiracy and coverup to use various types of electronic equipment involving infra-red cameras, electronic devices attached to automobiles to monitor Petitioner's travels, and wiretaps on telephones in violation of the 1st, 4th, 5th, 7th, 13th, and 14th amendments to the constitution of the United States of America.

On February 4, 1988, the U.S. Fifth Circuit Court of Appeals issued a Judgement affirming the District Court's Rulings. (The Court of Appeals Judgement is presented at Appendix C)

It is axiomatic that Summary Judgement is an inappropriate Ruling when there is a question of fact involved and Appellant issued a Demand For Trial By Jury on February 12, 1988 and then filed an Appeal To The Supreme Court dated February 23, 1988. (See Appendix D)

2) Statement Of The Facts

Appellant, Woodfin Voinche, is a citizen of the United States and of Louisiana and has a B.S. from Louisiana College, an M.S. from Louisiana Tech, and 30 hours towards a Doctorate from the University of Oklahoma Health Sciences Center.

In the fall of 1979, Appellant ran against State Representative Raymond Laborde and at that time believed he was under surveillance and his phone was wiretapped. Appellant remained politically active, and in 1980, because of political interference in his personal, business, and academic life prior to that time, Petitioner began to re-

search and write articles about economic and political affairs and the influence of the Rockefeller controlled Chase Manhattan Bank, the Rockefeller financed Trilateral Commission, Council on Foreign Relations, and various members of these organizations including: David Rockefeller, Alexander Haig, Henry Kissinger, George Bush, Casper Weinberger, etc. that were published in the Weekly News(Exhibit R-1), the Houston Chronicle(R-2), the Dallas Morning News(R-3), the Jackson Daily News (R-4), the Alexandria Daily Town Talk(R-5), and the Morning Advocate(R-6).

Appellant continued to document articles about the tax-exempt Rockefeller foundation(R-9), the transfer of technology to the Soviet Union and the Chase Manhattan Bank's financing of the Kama River Truck Plant(R-10), and the debt of Communist countries to the major bankers(R-11), which was also published in the Washington

Times(R-12) and discussed these bankers financing of Lenin and the Bolshevik revolution.

In 1985, Appellant continued to document articles on the attempt by these Trilateral bankers to create a world government and merge the U.S. with China and the Soviet Union(R-10). Exhibit R-14 was a series of three articles on the history of the armament manufactures up to the financing of Adolph Hitler.

More recently, Appellant has documented articles concerning the Iran/Contra affair, of the sale of nuclear technology to the Communist countries by General Electric, of the 60 American corporations(a number of these controlled by the Chase-Manhattan Bank) doing business in Communist Nicaragua (R-15), and of the so-called "Bakker affair." (R-16).

These are only a partial listing of the articles written over a seven year period.

The Chase-Manhattan Bank and Trilateral Commission are the subjects of a number of these other articles.

Through all of this period, Appellant, remained politically active at the local level and had no doubts there was a sophisticated effort to keep Petitioner under surveillance. During the 1983 election, Petitioner campaigned against Laborde and Edwards and believed he was still under surveillance.

During the evening of September 13, 1983, while attending a political speaking on the courthouse lawn in Marksville, LA., Appellant was kept under surveillance and followed when attempting to leave the rally by 3 plain-clothed individuals in two vehicles. Petitioner stopped his automobile to inquire as to why these individuals were following him. After a near confrontation, and an exchange of four-letter gestures and words, Appellant went back to the court-

house to find a friend to approach these individuals and find out why they were following Petitioner. Appellant approached two of these individuals and recognized one as State Policeman Clifford Devereaux. The next day the TOWN TALK reported the incident:

> Edwards was seemingly oblivious to the presence nearby of a man who allegedly threatened his life three times earlier in the day and... Edwards aide Wayne Ray said three telephone threats were received Tuesday at Edwards' Baton Rouge campaign headquarters. State police officers traveling with Edwards said a Marksville man authorities believe to be the caller was under surveillance for all but about three or four minutes... (Exhibit E-1)(Attached to NR-35 of Civil Docket Sheet)

Petitioner can now prove that he was the "Marksville man" referred to in the article by the Oral Deposition of State Policeman Clifford Devereaux that was supplemented into the record of the Fifth Circuit Court of Appeals.

> Q. Okay. Do you know of any other individual that was kept under surveillance on that night, September

the 13th, 1983?

A. No, Sir. (Deposition of Mr. Devereaux)(Page 7, lines 9-12)

With regard to the three telephone threats Appellant NEVER made any calls to Edwards' Baton Rouge campaign headquarters and as proof has entered a copy of Appellant's phone bill for that month on Exhibit E-1. Appellant has NEVER threatened Edwards' life, neither in the "three times" alleged in that article or at any other time, although by word-of-mouth this was used as the rationale for overt and surreptitious surveillance.

Appellant can now establish through the Oral Depositions of Mr. Clifford Devereaux, Mr. Edison Aymond, Mr. Paul Dominick, the the affidavit of Mr. Perry Sean Mills(Attachment 2 to Appellant's Brief), the affidavit of Mr. Richard Mose(Attachment 3 to Brief), and other evidence for a sophisticated conspiracy and coverup involving Federal and State agents to use various types of electronic equipment involving

infra-red cameras, electronic devices attached to automobiles to monitor Petitioner's travels, and wiretaps on telephones in violation of the 1st, 4th, 5th, 7th, 9th, 13th, and 14th amendments to the Constitution of the United States of America. This conspiracy is a surreptitious attempt to intimidate, harrass, and prevent Appellant from writing articles(the wide number of papers that have published these articles are a statement of their validity) and exercising the 1st amendment rights of freedom of speech, freedom of the press, the right to assemble, and right to petition the government for a redress of grievances.

Acting under color of state law and through distorted facts there is a violation of due process, equal protection, and right to vote clauses of the 5th and 14th amendments and Title 42 Sec. 1983 and 1985.

In alleging that Appellant "threatened" the life of Edwin Edwards and through the

Depositions, Appellant is now able to show that his name was associated with this article(Deposition of Mr. Dominick p. 2; Deposition of Mr. Aumond p. 10); Liberty interests are involved affecting Appellant's standing in the community and stigmatizing Petitioner(Board Of Regents Of State Colleges v. Roth, 408 U.S. 564, 92 S.Ct. 2701 (1972) resulting in a loss of employment opportunities. This long-term cummulative interference and harrassment through the power of the Governor's office has resulted in Petitioner having to leave school in Louisiana and attend school in Oklahoma.

These various forms of surveillance and harrassment are being used in an attempt to impose a sophisticated form of involuntary political servitude on Appellant in violation of the 13th Amendment to the Constitution.

As shown in Appellant's sworn affidavit (Attachment 4 to Brief) Petitioner has had a number of articles pertaining to Raymond

Laborde and his son taken from his files indicating that Appellant's home has been entered surreptitiously in violation of the 4th Amendment right "...of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures..."(also Arizona v. Hicks, 107 S.Ct. 1149(1987)

Petitioner's right to privacy is involved in avoiding disclosure of personal matters and affecting his independence in making decisions.

Appellant has done more than just make allegations; he has supported those allegations with Exhibits, Interrogatories, Depositions, and Affidavits and presented more than a question of fact. It is axiomatic that Summary Judgement and dismissal are inappropriate when there is a question of fact involved. Conley v. Gibson, 355 U.S. 41, 78 S. Ct. 99 (1957); Hughes v. Rowe, 449 U.S. 5, 101 S. Ct. 173(1980).

THE QUESTIONS PRESENTED ARE SUBSTANTIAL:

1) WHETHER APPELLANT HAS STATED A CLAIM AGAINST THE APPELLEES AND WHETHER THERE IS A CONSPIRACY TO KEEP APPELLANT UNDER SURVEILLANCE IN VIOLATION OF THE CONSTITUTION?

Appellees Edwards, Laborde, Rockefeller, South Central Bell, and AT&T continue to base their defense on the Rulings of the District Court, Appellant's initial complaint and continue to maintain that the "complaint fails to state a claim upon which relief can be granted" without considering in full the additional facts in the oral depositions, affidavits, interrogatories, exhibits, and the facts presented in Appellant's Briefs.

It is axiomatic and a long standing principle established by the Supreme Court, that all facts should be considered before dismissing for failure to state a claim. Conley v. Gibson, 355 U.S. 41, 78 S.Ct. 99 (1957); Hughes v. Rowe, 449 U.S. 5, 101 S.Ct. 173(1980)

> A complaint should not be dismissed for failure to state a claim

unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.

Appellant has supported his allegations with the facts presented in exhibits, depositions, interrogatories, and affidavits of state policeman Clifford Devereaux, Edison Aymond, D.M. Riddle, Paul Dominick, Perry Gean Mills, Richard Mose, and the Appellees for a sophisticated conspiracy and coverup using wiretaps, infra-red cameras, and electronic devices attached to Petitioner's vehicle in an attempt to destroy and deny Appellant equal protection under the constitution without due process because of Petitioner's past political activism and independence including: his political writings, his opposition to Defendants, his running for office in 1979, his providing of equal opportunity housing, and his stigmatization as a political trouble-maker.

There has been a violation of the 1st,

4th, 5th, 7th, 13th, and 14th amendments to the Constitution and requisite proof of state involvement for a cause of action under 28 USC 1331, 1332, 1343, and Title 42 USC 1983.

The necessary facts and elements are here for a cause of action under 42 USC 1985 including: 1) a conspiracy 2) for the purpose of depriving, either directly, or indirectly, any person or class of persons of equal protection of the laws, or of equal privileges and immunities under the laws 3) an act in furtherance of the conspiracy 4) whereby a person is either injured in his person or property or deprived of any right or privilege of a citizen of the United States. United Broth. Of Carpenters & Joiners v. Scott, 463 U.S. 822, 103 S.Ct. 3352(1983); also Griffin v. Breckenridge, 403 U.S. 88, 91 S.Ct. 1790(1971).

The requisite proof of state involvement is here for a conspiracy to violate

1st amendment rights(See United Broth. of Carpenters) and for a Section 1983 claim. Briscoe v. LaHue, 460 U.S. 325, 103 S.Ct. 1108(1983); Lugar v. Edmondson Oil Co.,Inc., 457 U.S. 922, 102 S.Ct. 2744(1982).

Title 42 Section 1985(2) and 1985(3) state in part:

> Sec. 1985(2) OBSTRUCTING JUSTICE; INTIMIDATING PARTY, WITNESSES, JUROR ...or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating in any manner, the due course of justice in any State or Territory, with the intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons to the equal protection of the laws...
> Sec. 1985(3) DEPRIVING PERSONS OF RIGHTS OR PRIVILAGES.
> If two or more persons in any State or Territory conspire, or go in disguise on the highway or on the premises of another, for the purpose of depriving...the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote...or to injure any citizen in person or property on account of such support or advocacy...the party so injured or

> deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

Appellant can establish a number of acts done in furtherance of this conspiracy, direct involvement by a number of Defendants, and motive and conformity of practice for involvement by the other Defendants.

As already shown in the Facts through Exhibit E-1, Appellant can prove through the deposition of Mr. Clifford Devereaux, that Petitioner was the individual under surveillance and the subject of the E-1 article and Appellant has been stigmatized with false allegations of having threatened Edwards' life without due process and these plain-clothed individuals "did conspire, or go in disguise on the highway" to intimidate and harrass Petitioner for political reasons and used the "alleged threats" as the rationale for this surveillance.

> Where a person's good name, reputation, honor or integrity is at

stake because of what the government is doing to him, notice and an opportunity to be heard are essential. (Board Of Regents Of State Colleges v. Roth, 408 U.S. 564, 92 S.Ct. at 2702(1972)

Appellant can further prove the existence of the use of sophisticated electronic surveillance equipment involving infra-red cameras, wiretaps, devices attached to automobiles to follow Appellant and the involvement of FBI agents in this surveillance in a blatant violation of due process.

Through the deposition of Mr. Edison Aumond(p. 3 lines 22-5 and p. 4 lines 1-3) Appellant can show there is an effort to further investigate and use sophisticated equipment to follow Petitioner by vehicle:

> A. They showed me the camera, it was mounted on the dashboard right close to the windshield. And they said they could take pictures at night, they said they had followed you towards Alexandria and you had turned around and they had followed you on Spring Bayou. And they wanted to know what I thought you was doing over there. I told them, Hell, I didn't know, to ask you...

Logic dictates that it would be impossible to follow an individual half way to Alexandria, back to Marksville, and to the outskirts of Marksville without sometype of electronic device attached to that vehicle.

Mr. Aymond initially indicated the agents questioning him were FBI agents and Appellant confirms this through the deposition of Mr. Paul Dominick. (p.3 lines 3-5)

Petitioner can show further Federal involvement through the affidavit of Mr. Perry Gean Mills(Attachment 2 of Brief) to the effect that Federal agents had him under surveillance during the 1979 election year while he was helping Appellant in his campaign against Mr. Raymond Laborde. It is unlikely Federal agents would have people assisting in campaigns under surveillance without compiling information on candidates.

As stated in Appellant's personal affidavit(Attachment 4 of Brief) someone in-

volved in this conspiracy has entered his home surreptitiously and taken papers and newspaper articles out of his personal files pertaining to Raymond Laborde and his son Donald Laborde. And through the interrogatories served on Laborde(NR 57-9) about his having knowledge of the incident described in Exhibit E-1, his incomplete answer was "Not personally" implying he has information about this incident without revealing the facts.

Petitioner can establish that the FBI was informed as early as April 22, 1976, of and had prior knowledge of a possible deprivation of privileges and immunities as a citizen of the United States. (Exhibit A-3) (Attached to NR-65) Appellant wrote the FBI:

> ...I have been involved in local politics. I ran against State Representative Raymond Laborde in 1979 and at that time I had reason to believe that my telephone was wiretapped. In addition, I have written articles critical of the international armaments and banking industry. For the above mentioned reasons(and others) I

> believe that not only is my phone tapped but my movements are being monitored electronically. And I believe there are enough people aware of the above and enough publicity about the above mentioned that the FBI if not directly involved, then at least one faction of the FBI is indirectly involved... then I ask the FBI to investigate

The FBI, then is negligent and liable under 28 USC Sec. 1343(2) and thus a party to this conspiracy.

Attorneys for South Central Bell and AT&T continue to argue Appellant has failed to state a claim and are discreetly oblivious to the additional evidence of wiretaps place on Plaintiff's phone by the affidavit of Mr. Richard Mose and the circumstantial evidence for wiretaps presented through the Aumond, Riddle, and Devereaux depositions and conformity of practice of the use of wiretaps by Edwards(see Exhibit E-2) and the Federal defendants(Exhibits R-7 and R-8). Conformity of practice is relevant under Rule 406 of Rules of Evidence.

Wiretapping and surreptitious entry to

search Appellant's files is a violation of the illegal search and seizure amendment and violates Petitioner's right to privacy in avoiding disclosure of personal matters and affecting autonomy of decision making without due process. Arizona v. Hicks, 107 S.Ct. 1149(1987); U.S v. Cuevas-Sanchez, 821 F2d 248(5th Cir. 1987)

With regard to Defendant Rockefeller, Appellant has stated a cause of action in that he is involved in a sophisticated conspiracy to keep Appellant under surveillance resulting in a deprivation of rights under the 1st, 4th, 5th, 7th, 13th, and 14th amendments to the constitution and the Federal courts have original jurisdiction "of any civil action" and "commenced by any person" to recover damages for injury resulting from any deprivation of any right, privilege or immunity secured by the constitution in accordance with Title 28 USC Sec. 1343 and under 42 USC 1983 and 1985. Rockefeller is

a member of the NATO Security Council and subject to Discovery under the Freedom of Information Act and Privacy Act.

Petitioner can establish motive for Rockefeller's involvement in this conspiracy and coverup, political and economic wherewithal, modus operandi, and a link and influence with Defendant Edwards and influence and control over the CIA, FBI, the National Security Council, NATO Security Council, Intelligence Advisory Board, 40 Committee, and Psychological Strategy Board of which all of these are interrelated and work together to varying degrees. As shown in the facts and through Exhibits R-1 to R-16, for the past eight years Appellant has written articles critical of a number of Rockefeller financed organizations and institutions and their involvement in financing and selling technology to the communist bloc. It is obvious this provides a powerful motive for Rockefeller using his influence with the

various intelligence agencies and at the state level to use sophisticated surveillance in an attempt to try to prevent Appellant from any further documented articles.

Attorneys for Rockefeller allege that Appellant's "references to Rockefeller in his brief itself are either irrelevant, or so unfounded and scandalous that they do not merit serious discussion." Far from being "irrelevant" or "unfounded" the statements concerning Rockefeller are based on the facts outlined in Appellant's documented articles and Exhibits R-7 and R-8(the December and May 1982 issues of The Atlantic Monthly) and these articles are base on facts compiled by the Senate Intelligence Committee, Committee on Foreign Relations, and files made public through the Freedom of Information Act; these are certainly relevant for Discovery as defined by Rule 26(b) of FRCP and 28 USC 2507.

The Rockefeller family, either directly or indirectly, through employees or agents (as Kissinger) has exerted considerable influence over the various intelligence agencies including the National Security Council, 40 Committee, etc. since the 1950's. (Exhibit R-7, p. 36)

We find David Rockefeller as head of the Business Group, maintained extensive ties through this group to the CIA.

> *The CIA and the Business Group, which by 1970...relied heavily on Edwards to use his organization and his contacts to channel their moneys...Many of the ties between the Business Group and the CIA in 1964 remained in place long after the election. (Exhibit R-7, p. 32)*

And further financing of the CIA and its agents by American business interests and the Rockefeller Foundation,

> *...he ostensibly was representing the Rockefeller Foundation...The agency had agreed in 1967, after widespread scandals about the use of...foundations as CIA conduits, not to utilize the credentials of the Ford, Rockefeller, and similar foundations to shield their agents (R-7, p. 55)*

During the Nixon years, when Alexander Haig and Henry Kissinger as members of the National Security Council used the FBI to "initiate" wiretaps on newspaper reporters and NSC staff members we find that Kissinger maintained his connection to the Rockefeller family and was "routinely shipping the most sensitive Kissinger files to Nelson Rockefeller's estate" if Kissinger "ever felt he was on the verge of being forced out..."(Exhibit R-9, p. 49)

David Rockefeller has maintained this extensive control over the intelligence agencies today and is presently a member of the NATO Security Council along with Henry Kissinger. The NATO Security Council is directly linked to the National Security Council and these agencies oversee all intelligence operations in this country and abroad. Rockefeller is further linked to NSC members, George Bush, Casper Weinberger, Alexander Haig(former member under Reagan),

and former CIA director William Casey through common membership in the Rockefeller financed Trilateral Commission and Council on Foreign Relations. And under Rule 406 of Rules Of Evidence routine practice or method of operating by individuals and organizations is relevant to prove "conformity" of "practice".

> Evidence of the habit of a person or of the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice.

Appellant can show the NSC and the CIA under William Casey maintained "domestic" covert operations with the motive of discrediting Americans opposed to their policies, Contra aid, and the Nicaraguan situation.

> One largely unexplored area of Casey's activity involves a domestic-propaganda campaign designed to rally support for the Nicaraguan contras and DISCREDIT Americans who opposed them... violated the executive order pro-

> *hibiting the CIA from interfering in American politics...Casey sent Raymond to the NSC in order to 'insulate' the CIA...to generate PRIVATE-SECTOR support and funding for the PR campaign...disseminating what one official called 'selective' facts. (Attachment A-Reply Brief)*

Petitioner can show Rockefeller involvement in handling "Contra funds" and that payments "were passed through" the Chase Manhattan Bank. (Attachment B-Reply Brief)

Appellant went further than opposing the Contras and documented articles on the 60 American multinational oil companies and major banks (a number of those controlled by David Rockefeller) and doing business in COMMUNIST NICARAGUA. (See Exhibits R-15 and Attachment C to Reply Brief) As already shown this provides ample motive for these groups "initiating" covert "operations" against individuals. (See also Exhibit R-3, p. 49--for using "wiretaps" to prevent an articles's publication)

Far from being "ludicrous" as Attorneys

for Rockefeller assert (Rockefeller Brief, p. 11) the facts outlined in Exhibits R-7 and R-8 about Rockefeller involvement in covert operations and wiretapping are very SERIOUS and based on Senate documents and "conformity of practice" is relevant under Rule 406 (Rules of Evidence).

Appellant has no doubts Defendant Rockefeller is involved in this sophisticated conspiracy to keep Petitioner under surveillance and can further show intimate links between Rockefeller and Edwards. Edwards receives $100,000. per year from a number of companies controlled by Rockefeller including: Exxon, Texaco, etc. (Attachment 5 of Brief). Appellant can additionally show that Edwards modus operandi for handling political adversaries is to bug automobiles and telephones. (Exhibit E-2) As the Supreme Court has already ruled it is conceivable for a nongovernmental party to "act 'under color of law' by conspiring

with the prosecutor or other state officials." Briscoe v. LaHue and Lugar v. Edmondson Oil Co., Inc.

There is no doubt a sophisticated conspiracy to keep Appellant under surveillance without DUE PROCESS and in violation of the constitution and Appellant has established a powerful motive for Rockefeller's involvement in this conspiracy, political and economic wherewithal, control and influence with the NATO Security Council, NSC, FBI, CIA, Defendant Edwards, etc. method of operating, and conformity of practice--all relevant to this case.

Defendant Rockefeller as a member of the Reagan Administrations NATO Security Council is subject to Discovery under the FOIA and under FRCP 26(b), 45(b) and 28 USC 1361, 2507, 2521.

Petitioner can prove FBI and/or CIA involvement in a coverup and intimidation of witnesses to this lawsuit, in violation

of 42 USC 1985(2). also Kush v. Rutledge, 460 U.S. 719, 103 S.Ct. 1483(1983).

2) WHETHER THE DEPARTMENT OF JUSTICE IS TRYING TO USE SEMANTICAL DISTORTION TO CIRCUMVENT AND USURP THE PROVISIONS OF THE FREEDOM OF INFORMATION ACT AND PRIVACY ACT AND LEGISLATE BY FIAT THEIR OWN FOIA AND PA AND INVOLVED IN A COVERUP AND WHETHER SUMMARY JUDGEMENT IN FAVOR OF THE DOJ WAS APPROPRIATE?

The DOJ and FBI is trying to use semantical distortion to circumvent and usurp the provisions of the FOIA and PA and the FBI is liable under 28 USC 1343(2) and involved in a conspiracy and coverup to keep Appellant under surveillance in violation of the constitution without due process.

Assistant United States Attorney, John Broadwell, states, "there is no evidence in this record to support Voinche's suspicions and allegations that federal authorities conducted surveillance on him or have records in their possession concerning him." (DOJ Brief, p. 9, 9) Broadwell cites Paul

Dominick as having "no first-hand knowledge of a federal investigation concerning Voinche" and Edison Aymond "stated that he was questioned by two police officers whom he thought were federal agents because they weren't 'local people'."

To the contrary, Appellant has evidence that not only are Federal agents involved in keeping Petitioner under surveillance, but are conspiring to coverup this fact by intimidating witnesses.

First, when Mr. Aymond initially told Appellant about agents questioning him, he didn't say "he thought they were federal agents because they weren't 'local people'" --he told Appellant he was questioned by FBI AGENTS, and Petitioner further verifies this by the testimony of Mr. Paul Dominick.

> Mr. Ed told you and I and then told me on separate occasion that he was approached by two F.B.I. agents and he was questioned. (Dominick Deposition, p. 3, lines 3-5)

This is strong evidence for possible

intimidation of witnesses by Federal agents to alter the testimony of witnesses and as shown already in Appellant's Brief, p. 21- Petitioner has a recorded conversation with Mr. Aumond's former employer reinforcing Appellant's suspicion of the above by: 1) Strongly implying that Petitioner's phone was wiretapped 2) Verifying the use of an infra-red instrument in the Marksville area 3) And informing Appellant that Mr. Aumond was having problems with his Social Security and strongly implying some type of intimidation! Not so coincidentally, approximately 3 weeks after Appellant recorded this conversation, Federal agents began investigating this individual.

As already shown on p. 21 of this Statement, Appellant has presented an affidavit from Mr. Perry Dean Mills in effect stating that Federal agents had him under surveillance during the 1979 election year while he was helping Appellant in his cam-

paign against Mr. Raymond Laborde. It is unlikely Federal agents would have people assisting in campaigns under surveillance without compiling information on the candidates. Not so coincidentally, several weeks after Mr. Mills signed the above mentioned affidavit he was discreetly "layed-off" from employment on a job supported by Federal funds.

Petitioner believes he can show further Federal involvement in surveillance of Appellant while attending Oral Roberts University in the Summer of 1980 and as shown in Attachment D to Reply Brief needs further Discovery in this area.

For the above named reasons, Petitioner requests a protective order pursuant to Rule 26(c) of FRCP and 42 USC 1985(2) for all witnesses and award damages for injury to person, property, business, or any attempt to alter income of witnesses in any attempt to prevent witnesses from testifying freely,

fully, and truthfully. Kush v. Rutledge

The DOJ and FBI are further trying to use semantical distortion to circumvent and usurp the provisions of the FOIA and PA and legislate their own FOIA.

Mr. John F. Loome's affidavit (NR-65) is vague and conclusory and does not complete the scope of the examination as requested by Appellant and as outlined in the body of the FOIA and is in CONFLICT WITH THE FACTS outlined above. The affidavit gives no detailed explanation of how the DOJ explored possible locations of records and does not list the names of individuals at the Field offices in Baton Rouge, Alexandria, and other field offices in central Louisiana and is in violation of 5 USC 552(a)(6)(B)(i) and 5 USC 552(a)(1)(A) which provides agencies "shall make available to the public" the following information:

> (A) descriptions of its central and field organization and the established places at which, the emplo-

yees...from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;..."

Petitioner further notes there is a conspiracy and violation of the constitution and 42 USC 1983 and 1985 and Appellant is not limited by the strictures of FOIA for the purposes of Discovery and Rule 26(b) of FRCP should apply.

The Loome's affidavit discreetly distorts the facts at p. 2 point 4 when it fails to mention that Appellant also requested a check of CIA files for information in the March 12, 1986 letter. (Exhibit A-1) (Attached to Reply Brief)

And the affidavit mentions nothing about any attempt to contact the CIA when the FOIA specifically provides for:

> *...consultation, which shall be conducted with all practicable speed, with ANOTHER AGENCY having a substantial interest in the determination of the request...*
> *(5 USC 552(a)(6)(B)(iii)*

Any other interpretation of this pro-

vision by the DOJ is an attempt to usurp the Congress and legislate their own FOIA and Appellant demands pursuant to 28 USC 1361 the DOJ provide an affidavit from this agency and his records. (Is the DOJ trying to provide an outlet in the event Petitioner proves Federal involvement in this surveillance?)

For the foregoing reasons, Summary Judgement in favor of the DOJ and failure to state a claim were inappropriate Rulings. It is axiomatic and a long standing principle that Summary Judgement and failure to state a claim are inappropriate when there is a question of fact involved. Appellant has made more than allegations; he has established the facts with Exhibits, Depositions, Interrogatories, and Affidavits for a sophisticated conspiracy and coverup to keep Appellant under surveillance in violation of the Constitution and without due process. The Rulings below are there-

fore inappropriate and in conflict with the Supremacy Clause of Article VI of the Constitution which states:

> *This Constitution, and the laws of the United States which shall be made in pursuance thereof... shall be the supreme law of the land; and the judges in every State shall be bound thereby, any thing in the constitution or laws of any State to the contrary notwithstanding.*

The Rulings below should therefore be reversed.

3) *WHETHER OBSTRUCTION OF JUSTICE HAS OCCURRED UNDER TITLE 42 SEC. 1985(2)?*

There has been an obstruction of justice and an attempt to intimidate witnesses to this lawsuit in violation of 42 USC Sec. 1985(2) with the intent to deny Petitioner equal protection under the law.

On August 31, 1987, Appellant filed a Motion To Compel Defendant Rockefeller (NR-40-42 Civil Docket Sheet) to answer interrogatories. At (NR-62) attorneys for Rockefeller claimed lack of personal juris-

diction in defense of their failure to answer the interrogatories propounded. Attorneys for Rockefeller allege he lacks "minimum contacts"(NR 36-7, p.106) with the state of Louisiana and base this on Mr. Rockefeller's sworn affidavit(NR 36-7) to the effect that "He has never solicited business in Louisiana"; "He has no employees or agents of any kind in Louisiana"; "He has never had any bank accounts, real estate, or telephone listings in Louisiana"; "He has never availed himself of any of the benefits of the laws of Louisiana."

When one compares this to the Exhibits R-21 and R-22 attached to Appellant's(NR 40-42) showing that Mr. Rockefeller is a stockholder of Exxon, Texaco, Mobil, etc. it becomes obvious his defense is based on false statements made under oath and is in violation of 42 USC 1985(2) and he should be compelled to answer interrogatories fully and honestly under oath.

On August 13, 1997, Defendant Edwards answered interrogatories propounded through his attorney. (Attached to NR 45-47) Appellant requested at Interrogatory #9, Edwards "list all parties involved" and "describe in detail events" described in the Exhibit E-1 article, wherein three alleged "threats" were made against Edwards and a "Marksville man" was "under surveillance for all but three or four minutes while Edwards" was in Avoyelles Parish.

Mr. Edwards' complete answer to Interrogatory #9 stated, "I have no information or names of parties involved in the incident." After a superficial reading of the article and the Devereaux Deposition, it becomes obvious this answer is false, evasive, incomplete and Edwards is failing to admit the genuiness of the facts outlined in Exhibit E-1. And by reading Exhibit E-2 it is obvious Edwards has made other false statements under oath and should be sanc-

tioned pursuant to Rule 37(b) and 37(c) and ordered to release any records pertaining to Appellant pursuant to Rule 26(b)(1) of FRCP. False statements under oath are an obstruction of justice and were made in a blatant attempt to conceal the facts and deny Appellant equal protection under the law in violation of 42 USC 1985(2).

As already shown on p. 35-6 of this Statement, Appellant can present strong evidence for intimidation of witnesses to this lawsuit by Federal agents. Approximately 3 weeks after Appellant recorded a conversation with Mr. Aumond's former employer verifying parts of Mr. Aumond's testimony, Federal agents began investigating this individual. And several weeks after Mr. Perry Gean Mills signed the affidavit concerning Federal surveillance of him while assisting Appellant during a 1979 election, Mr. Mills was not so

coincidentally "layed off" from a Federal job.

There has been obstruction of justice and intimidation of witnesses in an attempt to falsify and conceal the facts with the intent of denying Appellant equal protection under the law and from establishing his case, under 42 USC Sec. 1985(2) and Kush v. Rutledge.

4) WHETHER APPELLANT HAS A RIGHT TO TRIAL BY JURY UNDER THE 7TH AMENDMENT OF THE CONSTITUTION?

Appellant, Woodfin M. Voinche, is appalled at the distortion of fact and disregard for the constitution in this case and hereby demands the right of trial by jury as stated in the 7th amendment to the constitution:

> In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

This Petitioner has made more than allega-

tions and established the facts through Depositions, Affidavits, Interrogatories, and Exhibits of a sophisticated Conspiracy to use wiretaps, electronic devices attached to automobiles, infra-red cameras, and other surveillance equipment to impose a sophisticated form of involuntary servitude on Appellant in violation of the Constitution and without DUE PROCESS and is amazed at the manipulation and coverup and hereby demands Trial By Jury. It is axiomatic and a long standing principle established by the Supreme Court that Summary Judgement and failure to state a claim are inappropriate Rulings anytime there is a question of fact involved... and Appellant has established more than a question of fact in this case!

APPENDICES

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF LOUISIANA
LAFAYETTE/OPELOUSAS DIVISION

WOODFIN VOINCHE

-vs- CIVIL ACTION NO. 97-1181
JUDGE SCOTT

U.S. DEPARTMENT OF
JUSTICE, ET AL

RULING

Before us are five Motions to Dismiss and two Motions for Sanctions. Fed. R. Civ. P. 12 and 11.

Plaintiff Woodfin M. Voinche is pro se. Mr. Voinche brings this action under the Freedom of Information Act(FOIA), the Privacy Act and the United States Constitution. 5 U.S.C. 552(a)(4)(B); a(1)(G).

Mr. Voinche alleges that he has been subjected to government surveillance because of his political writings and activities. As a result, Mr. Voinche filed a request with the United States Department of Justice for all records pertaining to him. The Department of Justice responded that

there were no records. In this action, Mr. Voinche again seeks those records and, apparently, damages incurred from the alleged surveillance.

In addition to the Department of Justice, Mr. Voinche has named as defendants: American Telephone & Telegraph, South Central Bell Telephone Company, Mr. David Rockefeller, Governor Edwin W. Edwards, and Mr. Raymond J. Laborde.

Each of these latter five defendants has moved to dismiss under Fed. R. Civ. P. 12. We grant their motions.

In the Complaint, American Telephone & Telegraph, South Central Bell, Mr. Rockefeller, Governor Edwards and Mr. Laborde are each "joined as a party defendant in the spirit of Discovery and pursuant to Rule 19(a), Fed. R. Civ. P." Mr. Voinche provides no indication of wrongful conduct or involvement by these defendants in the alleged deprivation of his rights under the

FOIA, Privacy Act or Constitution. First, we find the reference to Rule 19(a) irrelevant. Second, defendants who are charged solely "in the spirit of Discovery" are certainly entitled to dismissal under Fed. R. Civ. P. 12(b)(6). See, e.g., Harper v. United States, 423 F. Supp. 192, 196 (D. S. C. 1976).*

Defendants Mr. Laborde and Mr. Rockefeller also move for sanctions under Fed. R. Civ. P. 11. We decline to impose sanctions.

We recognize the need to give pro se plaintiffs extreme deference and so, give Mr. Voinche the benefit of the doubt. See, e.g., Green v. McKaskle, 788 F.2d 1116 (5th Cir. 1986). We surmise that Mr. Voinche

---

*/ Furthermore, by their own terms and a legion of case law, the FOIA and Privacy Act authorize private civil actions only against an agency, not against any individual. 5 U.S.C. 552(a)(4)(B); (e); a(g)(1). E.g., Brown-Bey v. United States, 720 F.2d 467 (7th Cir. 1983); Unt v. Aerospace Corp., 765 F.2d 1440 (9th Cir. 1985).

meant by "spirit of Discovery" that he wanted these defendants as witnesses in his allegations of government surveillance.

However, we also recognize the need to protect defendants from pro se lawsuits. See, e.g., McKinney v. Regan, 599 F. Supp. 126 (M.D. La. 1984). "The right of self-representation is not a license...not to comply with relevant rules of procedural and substantive law." Faretta v. California, 422 U.S. 806, 835 n.46 (1975). Thus, we put Mr. Voinche on notice that if he proceeds to contravene the strictures of Rule 11, we will not hesitate to impose substantial sanctions in the form of costs and attorney's fees.

Motions to Dismiss GRANTED. Motions to Impose Sanctions Denied.

DONE AND SIGNED at Lafayette, Louisiana, this 15th day of Sept., 1987.

Rauman S. Scott
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION

WOODFIN M. VOINCHE

-vs- CIVIL ACTION
NO. 87-1191-A
UNITED STATES DEPARTMENT OF JUSTICE, ET AL Judge Scott

RULING

Before us is defendant United States Department of Justice's Motion for Summary Judgment.

Plaintiff filed this pro se Complaint under the Freedom of Information Act, the Privacy Act, and the United States Constitution, 5 U.S.C. 552(a)(4)(B); a(g)(1). In addition to the Department of Justice, plaintiff named as defendants American Telephone & Telegraph, South Central Bell Telephone Company, Mr. David Rockefeller, Governor Edwin W. Edwards, and Mr. Raymond J. Laborde. We dismissed the latter five defendants under Fed. R. Civ. P. 12 in a previous ruling. We now grant summary

judgment for the Department of Justice.

Plaintiff alleges that he has been subjected to Government surveillance because of his political writings and activities. As a result, on March 26, 1986, plaintiff requested the FBI provide him with "all information the FBI and/or CIA" had "on file about my personal and/or political activities." See Complaint. On March 26, 1986, the FBI requested more identifying information from the plaintiff in order to assist "an accurate search of our records." See Exhibits to Defendant's Motion for Summary Judgment. After the plaintiff provided additional data, on April 18, 1986, the FBI responded that, "a search of the indices to our central records system files at FBI Headquarters revealed no record identifiable with you." Id. On April 22 and May 14, 1986, plaintiff requested a search of FBI Field Offices in Louisiana. On June 20, 1986, the FBI in-

formed plaintiff that an additional search of the "indices to our central records system" at FBI Headquarters and a search of the "central records system of our New Orleans Office (encompassing all of Louisiana)" revealed no records. Id. Plaintiff then filed an appeal with the Assistant Attorney General, Office of Legal Policy. On July 24, 1987, the Office of Legal Policy replied that since no records had been found, there was no denial of records to appeal.[1]

Plaintiff challenges the response to his FOIA request. Plaintiff cites several cases and, in an affidavit, states that he has evidence of Government surveillance. Defendant, by affidavit of the supervisory Special Agent in the FOIA section at FBI Headquarters, argues that there is "no reason to believe that the FBI is in possession" of records identifiable with plaintiff.

The Freedom of Information Act concerns the production of records which an agency

possesses but which the agency improperly withholds.[2] See NLRB v. Robbin's Tire & Supply Co., 437 U.S. 214(1978). Here the agency asserts that it possesses no records. Therefore, if no genuine issue as to any material fact concerning the possession and control by the FBI of the records requested by plaintiff exists, then the defendant is entitled to a judgment as a matter of law. Fed. R. Civ. P. 56.

The defendant in an FOIA case is entitled to summary judgment upon showing that "it has fully discharged its obligations" under the FOIA. Miller v. U.S. Dept. of State, 779 F.2d 1378, 1382(8th Cir. 1985). An agency discharges its obligations by demonstrating that its search was reasonable:

> The adequacy of an agency search for requested documents is judged by a standard of reasonableness, i.e., 'the agency must show beyond material doubt...that it has conducted a search reasonably calculated to uncover all relevant documents.' But the search need only be reasonable; it does not

> have to be exhaustive. An agency may prove the reasonableness of its search through affidavits of responsible agency officials so long as the affidavits are relatively detailed, nonconclusary, and submitted in good faith. (Citations omitted).

Id. at 1393. We view the FBI's description and documentation of its search in the present case as proper and thorough. The defendant's affidavit explains in reasonable detail the scope and method of the search conducted by the FBI. We find that the FBI has complied with the obligations imposed by the Freedom of Information Act.

Plaintiff quotes from three cases to show that the adequacy of the FBI search is materially in dispute: Founding Church of Scientology v. Nat'l Security Agency, 610 F.2d 824 (D.C. Cir. 1979); Phillipi v. Central Intelligence Agency, 546 F.2d 1009 (D.C. Cir. 1976); and Weisberg v. U.S. Dept. of Justice, 627 F.2d 365 (D.C. Cir. 1980). However, the facts of these cases go against

plaintiff's position.

In Founding Church, the agency had no central index to its files. Supra, at 934. In Phillippi, the agency refused to either confirm or deny the existence of requested records. Supra, at 1012. In Weisberg, the agency affidavits did not even state which files were searched. Supra, at 371. In the present case, the FBI has indicated that the indices to its central records system at Headquarters and the central records system for Louisiana were searched and revealed no records identifiable with plaintiff. Again, we find the FBI's search in this situation to be reasonable.

Plaintiff also points to his affidavit which states that he has evidence of Government surveillance. However, we quote from a subsequent appeal in the Weisberg case: "The issue is not whether any further documents might conceivably exist, but rather whether the government's search for respon-

sive documents was adequate." (citations omitted). Weisberg v. U.S. Dept. of Justice, 705 F.2d 1344, 1351 (D.C. Cir. 1983); see Meeropol v. Meese, 790 F.2d 942, 951 (D.C. Cir. 1986). In the context of this FOIA request, we therefore find that plaintiff's affidavit lacks sufficient materiality to preclude summary judgment. See Matsushita Electric Industrial Co. v. Zenith Radio Corp., ___U.S.___, 106 S.Ct. 1348, 98 L.Ed.2d 538 (1986).

Plaintiff has, thus, failed to produce evidence that records responsive to his request have not been released. Nor has plaintiff shown that the FBI has treated his request in bad faith.[3]

There being no evidence to dispute the reasonableness of defendant's search, defendant's Motion for Summary Judgment is GRANTED.

DONE AND SIGNED at Alexandria, Louisiana, this 5th day of Oct., 1987

Nauman S. Scott
UNITED STATES DISTRICT JUDGE

1/ We note that plaintiff filed his Complaint on June 8, 1987.

2/ The Justice Department suggests this Court lacks jurisdiction in the instant case, citing Kissinger v. Reporters Committee for Freedom of the Press, 445 U.S. 136 (1980). We pause only to note that Kissinger does not deny the authority of a district court to ascertain the legal adequacy of an agency's response to an FOIA request.

3/ Plaintiff tells us that the defendant "fails to mention that Plaintiff also requested a check of CIA files...." See Plaintiff's Memorandum in Opposition to Justice Department's Motion for Summary Judgment. However, there is no indication in the record that plaintiff has ever filed an FOIA request with the Central Intelligence Agency.

IN THE UNITED STATES DISTRICT COURT
THE WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION

WOODFIN M. VOINCHE

-vs- CIVIL ACTION NO. 87-1181

UNITED STATES DEPARTMENT OF JUSTICE

JUDGMENT

For written reasons assigned this date, it is ORDERED, ADJUDGED AND DECREED that defendant United States Department of Justice's Motion for Summary Judgment filed against plaintiff Woodfin M. Voinche is hereby GRANTED and this case is dismissed.

Alexandria, Louisiana, this 5 day of Oct, 1987.

Nauman S. Scott
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 87-4781
Summary Calendar

WOODFIN M. VOINCHE

Plaintiff-Appellant

versus

UNITED STATES DEPARTMENT
OF JUSTICE, ET AL.,

Defendants-Appellees

Appeal from the United States
District Court for the Western
District of Louisiana
(USDC # CA 1191 "A")

February 4, 1988

Before RUBIN, JOHNSON, and WILLIAMS, Circuit Judges. PER CURIAM:*

There is no legal basis to Woodfin M. Voinche's suit under the Privacy Act, the Freedom of Information Act, and several articles of the U.S. Constitution against

---

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of will-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

American Telephone and Telegraph Co., South Central Bell Telephone Co., David Rockefeller, Governor Edwin W. Edwards, and Raymond J. Laborde. Only U.S. Government agencies can be sued for non-compliance with the Privacy Act and the Freedom of Information Act. See 5 U.S.C. 552(a)(4)(B); 5 U.S.C. 552a(g)(1). Furthermore, Voinche's complaint makes no allegations of fact concerning these defendants. The complaint only names them as defendants and identifies them. The district court was correct in dismissing these defendants.

Voinche's suit alleges that he requested a search of the FBI's files in both its Washington, D.C., headquarters and its Louisiana field office concerning any records of or about him. The FBI replied to Voinche, stating that it had no records identifiable with him.

The Government moved for summary judgment, supporting the motion with an affi-

davit from a Special Agent detailing the search made for records of Voinche. The district court granted the motion. The summary judgment dismissing Voinche's suit against the Government is correct for the reasons stated in the district court's opinion of October 7, 1937.

AFFIRMED.

U.S. COURT OF APPEALS

FIFTH CIRCUIT

LOUISIANA DIVISION

WOODFIN M. VOINCHE
(PLAINTIFF-APPELLANT)

vs. CIVIL ACTION NO.87-4731

UNITED STATES DEPARTMENT OF JUSTICE, AT&T, SOUTH CENTRAL BELL, DAVID ROCKEFELLER, EDWIN EDWARDS, RAYMOND LABORDE
(DEFENDANTS-APPELLEES)

NOTICE OF APPEAL

NOTICE IS HEREBY given that Plaintiff-Appellant, Woodfin M. Voinche, above named appeals to the Supreme Court of the United States from the JUDGEMENT of February 4, 1988 by the Fifth Circuit Court of Appeals and brought forth under the provisions of the Freedom of Information Act, the Privacy Act, the Constitution of the United States of America, and Title 42 USC 1983 and 1985.

This appeal is taken pursuant to Title 28 USC Sections 1251, 1252, and 1257, and Article III of the Constitution.

Respectfully submitted,

Woodfin M. Voinche
Pro Se Appellant
1107 N. Main St.
Marksville, LA 71351
(318)253-7788

CERTIFICATE

I certify that a copy of the above and foregoing Notice Of Appeal has been forwarded to all Counsel of record and the Clerk of the Supreme Court by placing the same in U.S. Mails and properly addressed this 22nd day of February, 1988, Marksville, Louisiana.

CONSTITUTIONAL AND STATUTORY PROVISIONS

UNITED STATES CONSTITUTION:

ARTICLE III SEC. 2

> The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made...In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be party, the Supreme Court shall have original jurisdiction.

ARTICLE VI, cl. 2

> Cited p. 40 of this Statement

AMENDMENT I

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT IV

> Cited in part p. 14 of this Statement.

AMENDMENT V

> No person shall be held for a capital or other infamous crime...nor be deprived of life, liberty, or property, without due process...

AMENDMENT VII

Cited p. 44 of this Statement

AMENDMENT XIII

Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States...

AMENDMENT XIV

...No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

CIVIL RIGHTS STATUTE:

42 USC Sec. 1983
CIVIL ACTION FOR DEPRIVATION OF RIGHTS

Every person who, under color of any statute, ordinance, regulation, custom, or usage,...subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured...

42 USC Sec. 1985

Cited p. 18 and 19 of this Statement

CERTIFICATE

I certify that 40 copies of the above and foregoing Jurisdictional Statement has been sent to the Clerk of the Supreme Court and 3 copies to the Counsel of record listed below, by placing same in U.S. Mails and properly addressed this 21th day of April, 1988. Marksville, Louisiana

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Marksville, LA 71351
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Sworn to and subscribed before me this

15th day of April, 1988.

NOTARY PUBLIC

NO. 87-1811

FILED
MAY 27 19
JOSEPH F. SPANIO
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1987

WOODFIN M. VOINCHE,
Petitioner

VERSUS

UNITED STATES DEPARTMENT OF JUSTICE, ET AL.,
Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

RESPONDENT DAVID ROCKEFELLER'S BRIEF IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

Whether the United States Court of Appeals for the Fifth Circuit was correct in affirming the district court's dismissal of petitioner's claim against respondent, David Rockefeller, pursuant to Fed. R. Civ. P. 12(b)(6), where petitioner made no allegations against nor sought any damages from Rockefeller in his complaint, but rather joined him as a defendant only in the "spirit of discovery"?

LIST OF INTERESTED PERSONS

1. WOODFIN M. VOINCHE
   Plaintiff/Petitioner

2. UNITED STATES DEPARTMENT OF JUSTICE
   Defendant/Respondent

3. SOUTH CENTRAL BELL
   Defendant/Respondent

4. AMERICAN TELEPHONE AND TELEGRAPH
   Defendant/Respondent

5. DAVID ROCKEFELLER
   Defendant/Respondent

6. EDWIN W. EDWARDS
   Defendant/Respondent

7. RAYMOND J. LABORDE
   Defendant/Respondent

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In the Supreme Court of the United States

OCTOBER TERM, 1987

WOODFIN M. VOINCHE,
Petitioner

VERSUS

UNITED STATES DEPARTMENT OF JUSTICE, ET AL.,
Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

RESPONDENT DAVID ROCKEFELLER'S BRIEF IN OPPOSITION

Respondent, David Rockefeller, respectfully prays that the Petition for Writ of Certiorari filed by petitioner in this case be denied for the reasons set forth below.

STATEMENT OF JURISDICTION

Petitioner, Woodfin Voinche, purports to appeal from a *per curiam* decision from the United States Court of Appeals for the Fifth Circuit. However, the appeal is improvidently taken because no Act of Congress was held unconstitutional by the Court below and because this case does not involve a decision from a district court of three judges. 28 USC §§ 1252 and 1253. Thus, in accordance with 28 USC § 2103, petitioner's papers should be regarded and acted upon as a petition for certiorari.

STATEMENT OF THE CASE

Petitioner, Woodfin Voinche is *pro se.* He filed a suit entitled "FOIA/Privacy Act Complaint" against the United States Department of Justice for its alleged failure to adequately respond to his Freedom of Information Act (FOIA) request, and he joined as defendants American Telephone & Telegraph (AT&T), South Central Bell, Edwin W. Edwards, Raymond J. Laborde and David Rockefeller. He made no allegations nor sought any damages against these latter defendants, but rather joined them "in the spirit of discovery and pursuant to R.19(a), Fed.R.Civ.P." (Complaint, "Parties," Paragraphs 3-7).

Rockefeller moved for a dismissal pursuant to Fed.R.Civ.P. 12(b)(2) on the grounds that the Court lacked personal jurisdiction over him, and pursuant to Fed.R.Civ.P. 12(b)(6) on the grounds that the complaint failed to state a claim upon which relief could be granted. Rockefeller further moved for sanctions pursuant to Rule 11. AT&T, South Central Bell, Edwards and Laborde joined in and filed their own 12(b)(6) Motions to Dismiss, and Laborde joined in and filed his own Motion for Sanctions.

In its ruling of September 15, 1987, the District Court pretermitted Rockefeller's 12(b)(2) Motion, but it dismissed Rockefeller and all of the other private defendants pursuant to their 12(b)(6) motions. The District Court denied the Motions for Rule 11 Sanctions, but "put Mr. Voinche on notice that if he proceeds to contravene the strictures of Rule 11, we will not hesitate to impose substantial sanctions in the form of costs and attorney's fees." Ruling of September 15, 1987. (Attached as Appendix A, p.4a, to Petitioner's Petition).

Subsequently, the United States Department of Justice moved for summary judgment on the grounds that it properly responded to Voinche's FOIA request. The

District Court granted summary judgment in favor of the Department of Justice in its ruling of October 5, 1987.

On appeal, the United States Court of Appeals for the Fifth Circuit affirmed both decisions of the District Court in its *per curiam* opinion of February 4, 1988. Voinche now seeks review of this decision.

ARGUMENT

There are two separate and distinct holdings over which Voinche seeks review—the summary judgment in favor of the Department of Justice and the dismissal of all private defendants pursuant to Fed.R.Civ.P. 12(b)(6). The former is not addressed herein, but for the reasons enumerated below, certiorari should not be granted over the latter.

I. The Dismissal Of Rockefeller And The Other Private Defendants Pursuant to Fed. R. Civ. P. 12(b)(6) Was Proper

One of the most basic and easily understood rules of legal pleading is that one cannot sue another unless he advances some claim upon which relief can be granted. Fed.R.Civ.P. 12(b)(6). Voinche ran afoul of this rule. His complaint states no claim whatsoever against Rockefeller and the other private defendants, but instead names them only in the "spirit of discovery," and asserts that they are necessary parties pursuant to Fed.R.Civ.P. 19(a). Where a complaint states no claim for relief against defendants, much less a defective claim for relief, it follows *a fortiori* that those defendants are entitled to dismissal pursuant to Rule 12(b)(6).

Upon finding that Voinche would be entitled to no relief even assuming all of his well-pleaded allegations to be true, the District Court and the Court of Appeals properly

held that Rockefeller and the other private defendants should be dismissed pursuant to Fed.R.Civ.P. 12(b)(6). Wright & Miller, *Federal Practice & Procedure,* Vol. 5, Sec. 1355, p.94 (1984). This conclusion was inescapable given the fact that Voinche made *no* allegations whatsoever against Rockefeller and the other private defendants. Indeed, Rockefeller is not even mentioned anywhere in the complaint apart from Paragraph 5 under "Parties," where Voinche states only that "Mr. Rockefeller is joined as a party defendant in the spirit of discovery and pursuant to R.19(a) Fed.R.Civ.P."

The notion that an individual can be made a defendant solely in the spirit of discovery is not worthy of serious discussion. Even a layman with no legal background must be expected to understand that lawsuits are filed to seek redress for damages—not to discover information. Surely, even the most naive layman understands that information can be discovered from a person without naming that person as a defendant to a lawsuit. The naming of Rockefeller and the other private defendants in the "spirit of discovery" was not only improper, but an abuse of these legal proceedings.

The naming of Rockefeller as a defendant pursuant to Fed.R.Civ.P. 19(a) is equally ludicrous. Rule 19(a) provides only that a person can be joined as a party to an action when complete relief cannot be accorded in his absence, or when he would (1) be unprotected or (2) expose existing parties to the risk of multiple or inconsistent obligations. As explained above, Rockefeller's presence is certainly not needed for complete relief where no relief is sought from him. Moreover, Rockefeller claims no interest in these proceedings and his absence will have no effect on the other defendants, who themselves have been dismissed upon their own motions. Thus, the District Court correctly found Voinche's "reference to Rule 19(a) irrelevant."

Ruling of September 15, 1987. (Attached as Appendix A, p.4a, to Petitioner's Petition).

The invocation of Rule 19(a) in what is styled a "FOIA/Privacy Act Complaint" is particularly disturbing; a private party can never be made a defendant to a suit brought pursuant to these Acts. *Brown Bey v. United States,* 720 F.2d 467, 469 (7th Cir. 1983); *Bruce v. United States,* 621 F.2d 914, 916, n.2 (8th Cir. 1980) and *Parks v. United States Internal Revenue Service,* 618 F.2d 677, 684 (10th Cir. 1980). As the District Court below held, "[B]y their own terms and a legion of case law, the FOIA and Privacy Act authorize private civil actions only against an agency, not against any individual." Ruling of September 15, 1987. (Attached as Appendix A, p.3a, to Petitioner's Petition).

Thus, Voinche's Complaint not only failed to state a claim upon which relief could be granted, but in naming private defendants, it was improper as a matter of law. Accordingly, the dismissal of Rockefeller and the other private defendants, as affirmed by the Court of Appeals, should not be disturbed by this Honorable Court.

II. The Granting of Ceritorari Would Not Advance The Law

This case is fact bound. The Questions presented by petitioner himself turn upon the particular facts present in this case. Indeed, while Voinche's 45 page brief is replete with irrelevant and scandalous assertions of fact, it makes reference to no pressing legal issues, much less any conflict in decisions from the courts below. For these reasons, the law would not be advanced by the granting of certiorari, and it is therefore respectfully submitted that certiorari

should be denied by this Court.

Respectfully submitted:

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CERTIFICATE OF SERVICE

I hereby certify that three copies of the above and foregoing pleading have been served on petitioner and all counsel of record by placing copies of same in the United States mail, postage prepaid, properly addressed this 27th day of May, 1988.

THOMAS J. WYLLIE